

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

THOMAS GREG ENGEL)	
)	
)	
)	Case No. 12BA-CV <u>00415</u>
)	
THE CURATORS OF THE)	JURY TRIAL DEMAND
UNIVERSITY OF MISSOURI,)	
and)	
NOAH MANRING)	
In his Official and Individual Capacity,)	
and)	
JAMES THOMPSON)	
In his Official and Individual Capacity,)	
and)	
SCOTT KOVALESKI)	
In his Official and Individual Capacity,)	
Defendants.)	

PLAINTIFF'S PETITION FOR DAMAGES

COMES NOW Plaintiff, Thomas G. Engel, by and through counsel, and for his cause of action against Defendants hereby states and alleges as follows:

1. Plaintiff, Thomas G. Engel, is a United States citizen, and a resident of Boone County, Missouri. He had been continuously employed, full-time in the College of Engineering, Department of Electrical & Chemical Engineering, University of Missouri-Columbia since August, 1995. He presently resides at 605 Pear Tree Circle, Columbia, MO 65203.
2. Plaintiff was awarded promotion to Associate Professor and tenure in 2000. As a tenured professor, Plaintiff has a valid business expectancy in his continued employment and an expectancy of employment that the conditions of his employment with Defendant University would be based on the Collected Rules and Regulations, on the terms of his appointment letter, and on the customs, practices, or *de facto* policies promulgated by Defendant University.
3. Since being awarded promotion and tenure, Plaintiff has received or been nominated to receive numerous awards for his teaching and research activities, including but not

limited to:

- a. Top 10 researcher in the College of Engineering
 - b. Two teaching awards
 - c. Endowed professor
 - d. Outstanding graduate mentor
 - e. Several millions of dollars in grant research funds
 - f. Taught numerous undergraduate and graduate courses and developed online courses
 - g. Developed a patent for Defendant University
4. Under Revised Missouri Statute § 172.010 et. seq. (RSMo. 2004) and pursuant to sections 9(a) and 9(b) of Article IX of the Missouri Constitution, the University of Missouri, an institution of higher education, was incorporated and created as a body politic to be known by the name “The Curators of the University of Missouri.” The government of the University of Missouri, thereof, is vested in The Curators of the University of Missouri (hereinafter “University”) which maintains and operates a campus in the City of Columbia, Boone County, Missouri where Plaintiff worked and was employed at all times relevant herein. Defendant University may be served in care of Phil Hoskins, Office of General Counsel, 227 University Hall, Columbia, MO 65211.

5. Defendant Noah Manring is, and at all times relevant herein was, Department Chair of the Department of Electrical and Computer Engineering, a resident of the State of Missouri, and an employee of the University with administrative duties affecting Plaintiff’s faculty, employment and contractual rights at the University of Missouri-Columbia. He may be served at: Room 349, Engineering Building West, University of Missouri, Columbia, MO 65212.

6. Defendant James Thompson is, and at all times relevant herein was, Dean of the

College of Engineering, a resident of the State of Missouri, and an employee of the University with administrative duties affecting Plaintiff's faculty, employment and contractual rights at the University of Missouri-Columbia. He may be served at: Room W1025, Lafferre Hall, Engineering Building East, Room 349, University of Missouri, Columbia, MO 65212.

7. Defendant Scott Kovaleski is, and at all times relevant herein was, Director of Undergraduate Studies of the Department of Electrical and Computer Engineering, a resident of the State of Missouri, and an employee of the University with administrative duties affecting Plaintiff's faculty, employment and contractual rights at the University of Missouri-Columbia. He may be served at: Room 303, Engineering Building West, University of Missouri, Columbia, MO 65212.

8. The 5th and 14th Amendments of the U.S. Constitution provide that no state may deprive any person of life, liberty or property without due process of law. U.S. Constitution, Am. 5, Am. 14, section 1.

9. 42 U.S.C. 1983 provides for redress by any person whose rights have been deprived by any person acting under color of federal law.

10. Defendants subjected Plaintiff to a hostile and offensive work environment, harassment, retaliation and deprivation of his constitutionally protected interests, which he found and which a reasonable person would find to be offensive, and which altered the terms and conditions of his employment. These actions include, but are not limited to:

- a. Interfering with Plaintiff's faculty rights as instructor in ECE2110 and ECE2100 by removing him as instructor of these classes;
- b. Removing Plaintiff from all teaching duties without due process of law in violation of his academic freedom;
- c. Failing to follow the ECE Bylaws by calling a Special Meeting without notice;

- d. Purposely interfering with Plaintiff's grant award from the Office of Naval Research;
- e. Purposely interfering with Plaintiff's grant award from the Naval Research Laboratory;
- f. Intentionally providing false and misleading information to the University's Security Officer which resulted in the suspension of Plaintiff's security clearance;
- g. Violating Plaintiff's liberty interests by communicating via electronic mail derogatory, insulting and false statements concerning Plaintiff;
- h. Failing to keep Plaintiff informed of ECE Departmental affairs that directly affect his employment rights and contractual duties; and
- i. Failing to provide an annual review of Plaintiff's job performance depriving him of merit wage increases.

11. On or about May 2010, Plaintiff was notified that a U.S. Government sponsored grant award in the amount of \$2 million to conduct research on Electromagnetic Launchers through the Office of Naval Research was being awarded based on a proposed project developed, authored and submitted by Plaintiff. Plaintiff was uniquely qualified to perform this research and no other researcher employed by Defendant University had the requisite knowledge, expertise or experience to conduct said research.

12. Defendants Manring, Kovaleski and Thompson conspired to deprive Plaintiff of his status as Principal Investigator on the grant award and replace him with Annette Sobel, a faculty member in Family Medicine with no expertise in Electromagnetic Launchers.

13. Plaintiff vigorously protested this hostile and unprecedented takeover of his research project and grant, and in November 2010 Plaintiff filed charges of Research Misconduct against defendants Manring, Kovaleski and Thompson.

14. In May 2010, defendant Manring removed Plaintiff from teaching ECE 2100 without cause or justification.

15. In March 2010, defendant Manring filed charges of Faculty Irresponsibility against Plaintiff. Plaintiff protested this filing to the Provost's office as being procedurally inadequate and for failing to state a charge of Faculty Irresponsibility pursuant to Section 300.010.L.4 of Defendant University's Collected Rules and Regulations. In October 2010, Defendant Manring withdrew the charge.

16. Upon knowledge and belief, defendants Thompson and Manring, intentionally and without a proper purpose, provided false and misleading information to the University's Security Officer which resulted in the suspension of Plaintiff's security clearance;

17. Upon knowledge and belief, in late October 2010, defendants Manring and Kovalski conspired with one or more of four (4) students in Plaintiff's ECE 2110 class to bring student complaints of gender and race discrimination against Plaintiff.

18. As a result of receiving notice of these charges in early November, 2010, Plaintiff met with defendants Manring and Kovalski and Professor Robert O'Connell on November 10, 2010. Plaintiff requested that the meeting be audiotaped but such request was denied by defendant Manring.

19. After the November 10th meeting, defendants Manring and Kovalski convened a Special Meeting of the ECE Faculty and materially misrepresented statements made by Plaintiff and these defendants. Plaintiff was not given notice of this Special Meeting as required by the ECE Bylaws, or asked to participate.

20. On or about November 13, 2010, defendants Manring, Kovalski and Thompson caused Plaintiff to be suspended from all teaching duties in ECE 2110 and ECE 4770, without due process of law. Plaintiff contacted the American Association of University Professors (hereinafter "AAUP") regarding this violation of his academic freedom under Defendant University's Collected Rules and Regulations. The AAUP, on behalf of Plaintiff, appealed the

actions of Defendant Manring to Defendant University's Chancellor, Brady Deaton, who denied Plaintiff was suspended from teaching.

21. On or about December 20, 2010, defendants Manring and Kovaleski conspired with the other faculty members in the ECE Department to bring a second Faculty Irresponsibility ("FI") charge against Plaintiff on the basis of the student complaints, even though no formal charges of discrimination by these students had been filed against Plaintiff.

22. Plaintiff objected to the procedural adequacy of the second FI charge because they were brought by various ECE Faculty members on behalf of four female students in Plaintiff's ECE2110 class. Section 300.010.L.4 contains no express language permitting the filing of a FI charge on behalf of another person who has not signed the charge.

23. On or about March 20, 2011, Plaintiff was notified by the Provost's office that the four students had filed a Student Discrimination Grievance pursuant to Section 390.010 of the Collected Rules and Regulations.

24. On or about April 29, October 28, November 10, November 15, November 30 and December 16, 2011, hearings were held before a Campus Committee on Faculty Irresponsibility ("CCFI") on the second FI charge.

25. On or about August, 2010 Plaintiff was denied a salary merit increase and not given a performance evaluation pursuant to Chapter 310 of the Collected Rules and Regulations.

26. On December 1, 2011, the student discrimination grievance hearing was held.

27. On or about December 29, 2011, the Student Discrimination Hearing Panel issued its Findings of Fact concluding there was no evidence of gender or race discrimination by Plaintiff.

28. On or about January 23, 2012, The CCFI issued its findings of fact and action items; concluding, inter alia, that Plaintiff had not violated the provisions of the Faculty Bylaws

or engaged in prohibited gender or race discrimination.

29. Plaintiff opposed the conduct referred to in paragraphs 10 through 22 and 25, and was subjected to retaliation for reporting internally and externally the harassment and attempting to file a charge of faculty irresponsibility and working with AAUP to appeal to the Chancellor for redress.

30. Each and all of the acts of the Defendant University, its officers, agents and employees, as alleged herein, were done or are threatened to be done by the defendant University, its officers, agents and employees, not as individuals, except for defendants Manring, Thompson and Kovaleski, but under the color and pretense of the statutes, regulations, customs and uses of the United States of America.

31. Plaintiff's job performance met legitimate expectations of the employer and he was imminently qualified for the position for which he was hired.

32. The claims in this action arise out of the acts that are alleged to be undertaken and injuries that are alleged to be suffered in Boone County, Missouri.

33. Defendants Manring, Thompson and Kovaleski are not protected by official immunity because their acts were either ministerial acts or were discretionary acts performed maliciously, wilfully or in bad faith, and therefore, were not within the scope of their authority. The doctrine of official immunity only protects public officials from an action for damages arising from their discretionary acts or omissions while acting within the scope of their authority. *State ex rel. Twiehaus v. Adolf*, 706 S.W.2d 443, 444 (Mo. banc 1986). Discretionary acts performed maliciously, willfully, corruptly and in bad faith are not protected. *State ex. rel Twiehaus v. Adolf*, 706 S.W.2d at 446; *Boyer v. Tilzer*, 831 S.W.2d 695, 698 (Mo. App. E.D. 1992).

34. The elements of the Missouri tort for tortious interference of a contract or

business expectancy are substantial evidence of (a) a contract or valid business expectancy, (b) defendant's knowledge of the relationship giving rise to the expectancy, (c) loss of that expectancy as a direct result of defendant's intentional interference, (d) an absence of justification for the defendant's actions, and (e) damages sustained by the plaintiff as a result.

Nazeri v. Missouri Valley College, 860 S. W.2d 303, 316 (Mo Banc 1993).

35. A *submissible* case for punitive damages is made when the elements for tortious interference are satisfied. *Downey v. McKee*, 218 S.W.3d, 492, 497 (Mo. App. W.D. 2007), quoting *Kerr Constr. Paving Co. v. Khazin*, 961 S.E.2d 75, 82 (Mo. App. W.D. 1997), *Boyer v. Grandview Manor Care Ctr, Inc.*, 759 S.W.2d 230, 235 (Mo. App. W.D. 1980).

36. Defendant University is not protected by Sovereign Immunity on the Breach of the Covenant of Good Faith and Fair Dealing and Declaratory Judgment counts. Sovereign immunity does not apply to contract cases. When a State or its agencies enter into a validly authorized contract, it lays aside whatever privilege of sovereign immunity it otherwise possesses and binds itself to performance, just as any private citizen would do by so contracting. See *Kunzie v. City of Olivette*, 184 S.W.3d 570 (Mo. 2006) and *V. S. DiCarlo Construction Co., Inc. v. State*, 485 S.W.2d 52 (Mo. 1972).

COUNT I: BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
(as to Defendant University)

COMES NOW Plaintiff and for Count I of his cause of action states as follows:

37. Plaintiff re-alleges and repeats the allegations set forth in paragraphs 1 to 36 and by reference make them a part of this claim.

38. As a result of the employer-employee relationship between Plaintiff and defendant University, the terms of Plaintiff employment contract with defendant University, and the Faculty Bylaws and Academic Tenure Regulations as found in defendant University's Collected Rules

and Regulations, and the Department of ECE's Bylaws, the expressed and implied promises made in connection with said employment contract and decisions, and the acts, conduct and communications resulting in said promises, defendant University promised to act in good faith toward and deal fairly with Plaintiff, which requires, among other things, that:

- a. Each party act in good faith toward the other concerning all matters associated with the terms of Plaintiff's contract as a tenured associate professor;
- b. Each party act in fairness toward the other concerning all matters associated with the terms of Plaintiff's contract as a tenured associate professor;
- c. Each party would comply with its representations and promises concerning all matters associated with the terms of Plaintiff's contract as a tenured associate professor; and
- d. Defendant University would give Plaintiff's interests the same consideration it gives its own.

39. Defendant University refusal to perform under the terms of Plaintiff's contract, defendant's Collected Rules and Regulations, and the Department of ECE's Bylaws was wrongful, in bad faith, and in violation of its duties.

40. Defendant University breach of the covenant of good faith and fair dealing caused Plaintiff to suffer damages and injury.

41. As a direct result and proximate cause of defendant University's breach of the covenant of good faith and fair dealing, Plaintiff suffered reputational harm to his career and profession, and loss of merit salary increases, in an amount yet to be determined, but in excess of five hundred thousand dollars (\$500,000.00).

WHEREFORE, Plaintiff prays for judgment against defendant University for an amount

which includes Plaintiff's loss of professional reputation harm, and such other and further relief as the Court deems just and proper.

COUNT II: TORTIOUS INTERFERENCE WITH CONTRACT
(as to Defendants Manring, Thompson and Kovaleski)

COMES NOW Plaintiff and for Count II of his cause of action states as follows:

42. Plaintiff re-alleges and repeats the allegations set forth in paragraphs 1-36 and incorporates them herein as if fully set forth.

43. Defendants Manring, Thompson and Kovaleski knew of Plaintiff's valid business relationship and expectancy of employment with defendant University.

44. The conduct and intentional interference of defendants Manring, Thompson and Kovaleski with Plaintiff's valid business relationship and expectancy of employment with the University were unjustified, malicious and done in bad faith.

45. As a direct result of defendants Manring's, Thompson's and Kovaleski's cooperation and involvement in creating a hostile work environment and retaliating against Plaintiff for opposing their interference with his research project award through ONR and the later filing of FI charges by these defendants as further punitive and harassing actions by these defendants, these defendants thereby directly harmed Plaintiff and damaged his employment and business expectancy.

46. There was no justification for these defendants' actions.

47. As a result of these defendants' conduct, Plaintiff has suffered and will continue to suffer lost income, lost seniority, and other damages, including but not limited to, emotional pain, suffering, inconvenience, mental anguish, humiliation, embarrassment, personal degradation, and loss of self-esteem.

48. By reason of their actions described herein, *e.g.* intimidation, harassment, character assassination, interference with external job duties, interference with internal job duties, a hostile work environment, and in light of Plaintiff's prior record of exemplary performance, defendants Manring, Thompson and Kovaleski are liable to Plaintiff for punitive damages. See *e.g. Kimzey v. Wal-Mart Stores, Inc.* 107 F.3d 568 (8th Cir. 1997), *In re Estate of Latimer*, 913 S.E. 2d 51 (Mo App W.D. 1995).

WHEREFORE, Plaintiff respectfully prays for judgment against defendants Manring, Thompson and Kovaleski, jointly and severally, for a sum of money to compensate him for the loss and damage to his business relationship and expectancy of employment with the University, and other damages for emotional pain, suffering, inconvenience, mental anguish, humiliation, embarrassment, personal degradation, and loss of self-esteem, and punitive damages in an amount set forth below, and any other appropriate relief necessary to make Plaintiff whole, and such other legal and equitable relief as this Court deems just and proper.

COUNT III: VIOLATION OF THE 5th AND 14th AMENDMENT TO THE U.S. CONSTITUTION AND 42 U.S.C. 1983
(as to Defendants Manring, Thompson and Kovaleski)

COMES NOW Plaintiff and for Count III of his cause of action states as follows:

49. Plaintiff re-alleges and repeats the allegations set forth in paragraphs 1 to 48, *supra*, and incorporates them herein as if fully set forth.

50. Defendants Manring, Thompson and Kovaleski, intentionally and purposefully interfered with the employment opportunities and the emoluments of Plaintiff's position as a tenured faculty member, causing him damage in violation of 42 U.S.C. 1983 and the 5th and 14th Amendments to the U.S. Constitution.

51. At all times relevant to the allegations contained herein, Plaintiff suffered

pecuniary and reputational harm in that the defendants Manring, Thompson and Kovaleski subjected Plaintiff to a hostile work environment, harassment and retaliation as a result of Plaintiff objecting to these defendants' hostile "takeover" of his ONR grant award and the later filing of FI charges by these defendants as further punitive and harassing actions by these defendants.

52. The unwelcome actions stated with particularity in paragraphs 10 through 28 was sufficiently severe or pervasive so as to unreasonably interfere with Plaintiff's work performance, or create an intimidating, hostile or offensive working environment.

53. As a direct and proximate result of the unlawful practices, Plaintiff has suffered loss of wages, benefits, experience, prestige and career advancement, as well as mental anguish and humiliation.

WHEREFORE Plaintiff respectfully prays that the Court:

- a. Grant judgment against defendants Manring, Thompson and Kovaleski for violation of Plaintiff's substantive due process rights.
- b. Grant to Plaintiff an award of his costs of litigation, including reasonable attorney's fees and reasonable expenses (42 U.S.C. 1988);
- c. Award to Plaintiff punitive damages; and
- d. Award to Plaintiff such other and further legal and equitable relief as this Court deems just and proper.

COUNT IV: DECLARATORY JUDGMENT – CHAPTERS 527 and 536 RSMO
(as to Defendant University)

COMES NOW Plaintiff and for Count IV of his cause of action states as follows:

54. Plaintiff re-alleges and repeats the allegations set forth in paragraphs 1 to 53 and incorporates them herein as if fully set forth.

55. The Faculty Bylaws and the Faculty Grievance Process, as propounded by the defendant University and its agents, and presented to the Board of Curators for adoption as a Collected Rule and Regulation of the University, provide inter alia:

a. Section 300.010.L.10 of the Faculty Bylaws provides, “Charges Against Administrators -- This Article shall cover charges of unethical or irresponsible actions against administrators in their teaching capacities... Charges of unethical or irresponsible actions against administrators in their capacity as administrators involve procedures beyond the scope of this Article.”

b. Chapter 370 Academic Grievances, provides, “Accordingly, the members of the faculty as defined in the rules and regulations, Section 310.020 A, including faculty who hold an administrative title or function, are encouraged to use this procedure for grievances relating to their status or activities as faculty members. This grievance procedure should not be used in connection with a matter relating to any administrative title or function which the faculty member currently holds or may also have had.”

c. Section 300.010.L.4 of the Faculty Bylaws provides: “A charge of unethical or irresponsible action may be brought against a Faculty member or teacher by a person or group of persons associated with the University, such as a student, Faculty member, teacher, administrator, or Board member.”

56. Plaintiff attempted to file charges of Faculty Irresponsibility and an Academic Grievance against defendants Manring and Thompson for their deprivations of his protected property

and liberty interests. He was told by the Provost's office that these administrative procedures and processes were not available to him.

57. Upon knowledge and belief, defendant University has no other administrative procedures available to Plaintiff to address or remedy alleged deprivations of his constitutionally protected interests.

58. Plaintiff objected to the filing of a FI charge against him by a group of faculty on behalf of four students on the basis of lack of standing to bring a claim on behalf of others. He was told by the employee representing defendant University that because Section 300.010.L.4 does not prohibit the filing and disposition of a charge by some person acting on behalf of another person, then the charge can be brought.

59. Upon knowledge and belief, the University has another administrative procedure available to students to address or remedy alleged deprivations of their constitutionally protected interests (see Section 390.010 – Student Discrimination Grievance).

60. Chapter 536.018 of the Missouri Administrative Procedures Act exempted institutions of higher education, supported in whole or in part from state funds, if such institution has established written procedures to assure that constitutionally required due process safeguards exist and apply to a proceeding that would otherwise constitute a "contested case" as defined in section 536.010.

61. Plaintiff, by virtue of his status as a tenured faculty member is entitled to constitutionally required due process safeguards established by defendant University whenever actions by Defendant's agents act in ways to deprive him of his constitutionally protected interests.

62. Defendant University, in adopting Sections 300.010.L and 370.015 of the Collected Rules and Regulations, impermissibly shielded defendant's agents with an administrative title or function from the filing of an academic grievance or faculty irresponsibility action against them.

63. In adopting Sections 300.010.L and 370.015 of the Collected Rules and Regulations, defendant University denied Plaintiff, as a tenured faculty member, any administrative recourse to remedy deprivations of his protected property and liberty interests.

64. In permitting a FI charge to be brought by a group of faculty on behalf of students, defendant University subjected Plaintiff to the same student discrimination charges in the FI charge as were brought by the students themselves in the Student Discrimination Grievance, in violation of Section 300.010.c.1.b.

65. By reason of the foregoing, a declaratory judgment is both necessary and proper in order to set forth and determine the rights and obligations that exist among the parties, and to correct the flawed procedures or application of flawed procedures by defendant University and all other persons acting on defendant University's behalf, in denying Plaintiff an administrative remedy as a result of actions that deprive him of his constitutionally protected interests and in requiring Plaintiff to defend against actions brought by individuals on behalf of other individuals.

WHEREFORE, Plaintiff respectfully requests the Court enter judgment as follows:

- a. Declare that by virtue of having tenure in his faculty position in the College of Engineering at the University, Plaintiff is entitled to due process of law regarding all decisions that affect his protected property and liberty interests in that position; and
- b. Declare that by virtue of its exemption from the Missouri Administrative Procedures Act (Chapter 536 RSMo), Defendant University must provide adequate procedures and safeguards protecting its employees with protected property and liberty interests from the arbitrary and capricious actions of employees, officers and agents of Defendant University with administrative titles or positions; and

c. Award such other and further relief as the Court deems just and proper under the circumstances.

COUNT V: PUNITIVE DAMAGES
(as to Counts II and III only)

COMES NOW Plaintiff and for Count V of his cause of action states as follows:

66. Plaintiff re-alleges and repeats the allegations set forth in paragraphs 1 to 36 and paragraphs 43 to 53, and by reference makes them a part of this claim.

67. Defendants' actions against Plaintiff were taken wantonly, wilfully, outrageously or with reckless disregard to Plaintiff's rights.

68. Pursuant to Missouri Rule of Civil Procedure 55.19, Plaintiff's request for punitive damages is based upon defendants' actions in violation of the University's Rules and the 5th and 14th Amendments to the U.S. Constitution and 42 U.S.C. §1983, and Missouri law, in that said actions were wanton, willful, outrageous and in reckless disregard of Plaintiff's rights.

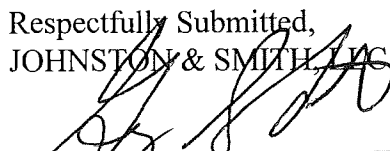
69. As a direct result of defendants' violation of Plaintiff's rights, Plaintiff is entitled to five million dollars (\$5,000,000.00) in punitive damages.

WHEREFORE, Plaintiff prays judgment against defendants Manring, Thompson and Kovaleski, jointly and severally, for punitive damages, and for any other and further orders in an amount as this court deems fair, reasonable and just.

JURY DEMAND

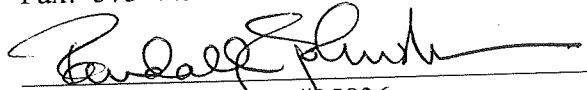
Plaintiff hereby requests a trial by jury.

Respectfully Submitted,
JOHNSTON & SMITH, LLC



George S. Smith, #53019
2800 Forum Boulevard, Ste 3

Columbia, Missouri 65203
Telephone: 573-499-1616
Fax: 573-449-3004

A handwritten signature in black ink, appearing to read "Randall B. Johnston", written over a horizontal line.

Randall B. Johnston, #35936
2800 Forum Blvd., Suite 3
Columbia, MO 65203
Telephone: 573-499-1616
Fax: 573-449-3004
Attorneys for Plaintiff